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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,893	06/21/2001	John Joseph Curo	8591	6717

27752 7590 08/25/2004
THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/886,893	CURRO ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,16,21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15,17-20 and 24-26 is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 23 is/are rejected.
- 7) ☒ Claim(s) 3,7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on June 4, 2004, has been entered. Claim 2 has been cancelled. Claims 1, 7, and 8 have been amended. Therefore, the pending claims are 1 and 3 – 26. Claims 9, 10, 16, 21, and 22 are withdrawn from consideration as being drawn to a nonelected invention.

Terminal Disclaimer

2. The terminal disclaimer filed on June 4, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Application No. 09/584,676 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 7 of copending Application No. 09/886,740. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 10 of copending Application No. 09/886,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 09/886,830. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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7. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 – 7, 10 – 13, and 21 – 29 of copending Application No. 09/886,831. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. The terminal disclaimer filed on June 4, 2004 only included US Application 09/584,676.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 4 – 6, and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (5,628,097) for the reasons of record.

Allowable Subject Matter

11. Claims 3, 7, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims for the reasons of record.

12. Claims 11 – 15, 17 – 20, and 24 – 26 are allowed for the reasons of record.

Response to Arguments

13. Applicant's arguments filed June 4, 2004 have been fully considered but they are not persuasive. The Applicant argues that Benson does not teach all the claimed limitations

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including having the outer layers in a face to face relationship (response, page 7). However, the three layer nonwoven apertured composite is made by the same method taught by the Applicant in the present invention. Therefore, it is felt that the three-layer composite would have the same structure, i.e., the outer layers being in a face-to-face relationship, since the three layers are combined by the same process as the Applicant's product, including creating the weakened regions at the bond sites which break to form apertures. Therefore, the rejection is maintained.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
August 13, 2004



CHERYL A. JUSKA
PRIMARY EXAMINER

CHERYL A. JUSKA
PRIMARY EXAMINER